(14)

No. 888

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

GEORGE E. SULLIVAN,
Petitioner,

v.

EUGENE MEYER

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA — AND BRIEF IN SUPPORT.

WILLIAM J. NEALE,

GEORGE E. SULLIVAN,

Counsel for Petitioner.

SUBJECT INDEX

	Page
Petition for Writ of Certiorari	1
Summary Statement of Matters Involved	2
Jurisdictional Statement	23
Questions Presented	23
Reasons Relied Upon for Allowance of Writ	24
Brief in Support of Petition for Certiorari	26
I. Opinion Below	26
II. Jurisdiction	26
III. Statement of Case	27
IV. Specifications of Errors Intended to be Urged	27
V. Argument:	28
(a) Extent of Fair Comment	28
(b) Right of Criticism in Wartime	30
(c) Equal Justice under Law requires Judges to make legal rulings and make them effective, and not leave it to juries to make such legal rulings abortive	30
(d) Justification in libel must be as broad and complete as the libel itself	31
(e) Judgment for petitioner required from any legal standpoint	31
(f) Fair and impartial jury denied petitioner	32
Conclusion	33

CASE INDEX

Page

Burt v. *Advertiser Newspaper Co.*, 154 Mass. 238 28
Coleman v. *MacLennan*, 78 Kan. 711 ..... 21, 29
Commercial Pub. Co. v. *Smith*, 149 F. 704 31
Ex parte Milligan, 4 Wall. 2 2
Frohwerk v. *United States*, 249 U. S. 204 ..... 2, 25, 30
Grand Union Tea Co. v. *Lord*, 231 F. 390 31
Ott v. *Murphy*, 160 Iowa 730, 141 N. W. 463 29
Post Pub. Co. v. *Hallam*, 59 F. 530 28
Sullivan v. *Meyer*, 67 App. D. C. 23—2, 20, 21, 22, 30
Sweeney v. *Patterson*, 76 U. S. App. D. C. 23 ..... 20, 21, 22, 29
United States v. *Wood*, 299 U. S. 123 ..... 17, 25, 32
Viereck v. *United States*, 318 U. S. 236 30
Washington Post Co. v. *Chaloner*, 250 U. S. 290 31
Washington Times Co. v. *Bonner*, 66 App. D. C. 280 ..... 20, 28, 29

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To the Chief Justice and Associate Justices of the Supreme Court of the United States:

George E. Sullivan, the petitioner, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered February 29, 1944 (R. 254), their Case No. 8525, affirming a judgment against the petitioner by the District Court of the United States for the District of Columbia in a civil

action for libel brought by petitioner as plaintiff against Eugene Meyer as defendant on April 18, 1942 (R. 1). Issuance of mandate on the judgment of said Court of Appeals was stayed by that Court on March 17, 1944, pending application for certiorari to this Court.

SUMMARY AND SHORT STATEMENT OF MATTER INVOLVED

In January, 1942, after more than six years of special research (R. 16), a carefully documented legal and historical book of 195 pages, "The Road to Victory" (R. 56-251), was completed and published by petitioner, George E. Sullivan, an experienced lawyer of nearly 40 years' active practice (R. 13-14), with known "character" and "motives" certified by the United States Court of Appeals for the District of Columbia of their "own knowledge" to be "of the highest" (67 App. D. C. 228, 229). The scope of the book is tersely and accurately stated in Library of Congress cataloging as follows: (1) World politics, (2) Jewish question, and (3) U. S.—Civilization.

Throughout the book it is manifest that the author believed this Court spoke with authority when it said, in *Frohwerk* v. *United States,* 249 U. S. 204, 208, 63 L. ed. 561, 565:

> "We do not lose our right to condemn either measures or men because the country is at war."

and also when it said, in the much earlier case of Ex parte Milligan, 4 Wall. 2, 120, 18 L. ed. 281, 295:

> "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances."

Unless this Court spoke with authority in so declaring, petitioner's book demonstrates that intelligent patriotism could not function at all in war time, but would be supplanted by totalitarianism (R. 62-63).

The duty of our armed forces is emphatically stated at the commencement of petitioner's book:

> "America is again in war, a war which is another World War. Every loyal American will do his part on behalf of America in that war. There can be no such thing as a half-way war.
>
> "With our armed forces the motto must be:
>
> " 'TIS NOT TO REASON WHY;
> 'TIS BUT TO DO OR DIE." (R. 61)

It is carefully explained, however, that "our other loyal citizens" have other important duties to perform—those in Congress and others as well—including the duty "to help see to it that none of our armed forces die in vain," and that the office of Commander-in-Chief of our armed forces shall not be unconstitutionally expanded into "Commander of our Congress" or "Commander of our Sovereign People" (R. 61), the first chapter of the book concluding thus:

> "It is the patriotic purpose of this book to

serve up with the utmost fairness and charity the long-suppressed truths which are so vital to be known NOW." (R. 64)

WORLD POLITICS.—According to authentic revelations in the book, too much is regarded today as world politics which is rank gangsterism. The book traces to organized gangsters—rather than to any nation, race or religion as such—the responsibility for hatreds, hypocrisies and wars which are destroying Civilization, with nations controlled from behind the scenes like pawns, and human beings robbed and slaughtered as though possessing no more rights than cattle, the gangsters all the while pretending a purpose to give humanity more freedom, security and happiness. The pretendedly new philosophies or ideologies, used as masks for the outrageous performance, are shown throughout petitioner's book to be merely new adaptations, under new and misleading names, of the ancient gangster concept that government should direct the lives of the people, and thereby enable a ruling group or class to exploit the people,—a concept utterly irreconcilable with Americanism, and which dares not make a frontal attack upon Americanism, but seeks to accomplish its purpose by a campaign of cleverly fused innuendo and prevarication impugning the loyalty of patriotic defenders of Americanism.

JEWISH QUESTION. — The so-called Jewish question is demonstrated in the book to be a screen behind which the worst foes and oppressors of the Jewish people have been hiding for centuries, a special clique or sect of imposters by no means synony-

mous with the Jewish people but formerly known as Pharisees, yet no longer making use of the *name* since ordinary people have been able to learn from their dictionaries that "hypocritical" and "pharisaical" mean the same thing. The book identifies beyond a shadow of a doubt the special clique or sect which is chiefly responsible for intolerances and persecutions heretofore commonly attributed to Jews by non-Jews,—the same clique or sect described, in 1919, by Winston Churchill to the House of Commons as "the most formidable sect in the world," at the same time that he also revealed the "international," rather than Russian, character of the sect, charged by him with having "robbed Russia," at one stroke, of both "peace and victory," in order to launch "a world-wide proletariat revolution" (R. 67-68). Churchill seems to have well understood that the formidable sect alluded to by him was in nowise synonymous with the Jewish people. The fundamental distinction seems also to have been expressly recognized by the Divine Saviour, who loved all men, never deviated from the truth, and minced no words in denouncing the criminal sect of Pharisees for having "made void the Commandment of God" and also "the doctrine of the Pharisees" for making a "child of hell" out of every convert (R. 96). This fundamental distinction is recognized throughout petitioner's book, which exposes authentically the medium through which the doctrine of the Pharisees has been perpetuated through many centuries, such medium being called "Talmud" (R. 80-93). The maintenance of the distinction throughout petitioner's book is apparent from the following:

"It should not be difficult for persons of common sense to realize that the clique that devised the Talmud must constitute a closely-knit band for imposing its rule upon victimized peoples, and is not synonymous with any entire people." (R. 82)

"This background will make manifest that the leading persecutors of the Jews, who are THE REAL ANTI-SEMITES, are a group or band of false and coercive leaders, to whom blood means nothing, and honesty less, who deceive, coerce and mis-use the Jewish people, as well as other peoples. Victimization of Jews is second only to that of non-Jews who are expressly featured in the tenets of the Talmud for merciless victimization." (R. 85-86)

"To claim that such a system should be honored and respected as the Jewish Bible is an insult to intelligence. It is bad enough to have Jews robbed of religion and freedom by means of the Tadmudic system, without calling the means used the victims' Bible. It is also an insult to Almighty God to dignify as a religion a nefarious system which makes of religion a mere pretense or veneer, transgresses with impunity the Commandments of God, and substitutes for love of neighbor in accordance with the universal brotherhood of man organized hate, greed and crime." (R. 91)

"When Talmudism is at an end, Civilization will be re-enthroned. The very air we breathe will be different. A terrible load will be lifted

from the backs of Jews, and an even more terrible load will be lifted from the backs of non-Jews." (R. 100)

"We have had in the past, and we have today, loyal American citizens of Jewish descent willing to sacrifice everything for the American Republic. We must be prepared to safeguard and protect them in the same full measure that we do other loyal American citizens." (R. 108)

"A criminal system cannot create a race. Only God can create a race. The international band or gang, which these International Brigands persist in calling 'Jews,' should really be called 'Talmudists,' to avoid stigmatizing, as members of the band or gang, many persons of Jewish stock who indignantly spurn the Talmudic plot." (R. 243)

"It should also be borne in mind that the 'Talmudists' include many persons not of Jewish stock at all, but who have become enamored of the brigandry features of Talmudism." (R. 243)

"While many of the Jews holding public office in America today appear to be Talmudists, if we judge them by the strange nature of their activities, it is certainly not true that all Jews in America are Talmudists." (R. 244)

"All peoples need to be rescued from the Talmudic grip, Jews as well as non-Jews." (R. 244)

"If we want to preserve our great Republic from disintegration through racial hatreds, we

must never tolerate any super-race pretenses,—Talmudic, Nazi or any other. All super-race concepts involve denial of individual freedom even to the members of the so-called super-race, who are regimented for the purpose of subjugating other peoples." (R. 244)

"HITLER'S PROGRAM A STUDIED PLAGIARISM—A study of the crafty system of the 'formidable sect' for world-conquest, used with such fiendish efficiency to lay Russia low, strongly suggests that Hitler's program is largely a studied plagiarism of the same system, merely re-adapted from a concealed pro-Jewish concept to an openly proclaimed pro-German concept. All super-race pretexts for world conquest reduce the so-called super-race to quasi-enslavement in the process of effecting complete enslavement of other races." (R. 69)

"We are in a terrible war, begun with treacherous and cowardly destruction of American lives and property, and against which the American Republic must defend as RESOLUTELY as though there were no secret, behind-the-scenes, history involving skulking vultures awaiting their harvests in Britain, America, Germany, Italy and Japan. But we must not close our eyes to the existence and plans of such vultures, and succumb to their snare of World Government, no matter how it may be disguised, or how many well-intentioned groups may unwittingly endorse it." (R. 224-225)

"It is absolutely demonstrable that a World Government is as inherently destructive of lib-

> erty and happiness as is a collectivism; in fact, that they are essential to one another to make human enslavement enduring. Free nations are as essential to an enduring Civilization as free individuals." (R. 225)

Petitioner's book deals with authentic and documented matter emanating from sources which cannot be disposed of as mere partisan propaganda, and no partisan propaganda will be found in the book. The presumptuous arrogance and organized intolerance of the Pharisaic-Talmudic imposters, disguising themselves as constituting the Jewish people, are shown to have been continuous for ages, dating back to the sixth pre-Christian century. An authoritative essay "The Talmud" by Arsene Darmesteter, recently re-printed by The Jewish Publication Society of America, describes the Talmud and Judaism as "one and the same," with "Hebraism" completely ended in the "transformation" (R. 80). The essay defines the Talmud as "Pharisaic formalism" dating back to "the Captivity," and serving as "a rallying point for the dispersed of Israel," a "system of observance having relation to every moment of life," reducing the dispersed of Israel "to never-ending slavery—slavery accepted freely and with joy, for this sacred, a thousand times blessed yoke is the condition of happiness" (R. 80-81). The writer of such essay, Darmesteter, is expressly recognized as an outstanding authority by Chief Rabbi Hertz in his foreword to a very recent (1935) edition of the Talmud, comprising 8 volumes, one set of which is in the Library of Congress (R. 81), the foreword to such recent edition tracing the Talmud back to "the sixth pre-

Christian Century" and to "the feverish activity of the Pharisaic schools" (R. 83). Five exact quotations from such recent authentic edition of the Talmud, reproduced in petitioner's book as demonstrating that the Talmudic tenets are "brazen vehicles for organized despoilment" (R. 86) must be carefully read and pondered, as follows:

> "Where a suit arises between an Israelite and a heathen, if you can justify the former according to the laws of Israel, justify him and say: 'This is OUR law'; so also if you can justify him by the laws of the heathens justify him and say (to the other party): 'This is YOUR law'; but if this cannot be done, we use subterfuges to circumvent him." (R. 86)
>
> "And with all lost things of thy brother's, it is to your brother that you make restoration, but you need not make restoration to a heathen." (R. 86)
>
> "With respect to robbery—if one stole or robbed or (seized) a beautiful woman, or (committed) similar offences, if (these were perpetrated) by one Cuthean against another, (the theft, etc.) must not be kept, and likewise (the theft) of an Israelite by a Cuthean, but that of a Cuthean by an Israelite may be retained." ("Cuthean (Samaritan) was here substituted by the censor for the original goy (heathen)," says Footnote). (R. 86)
>
> "For murder, whether of a Cuthean by a Cuthean, or of an Israelite by a Cuthean, pun-

ishment is incurred; but of a Cuthean by an Israelite, there is no death penalty." (R. 86)

"It also applies to the withholding of a laborer's wage. One Cuthean from another, or a Cuthean from an Israelite is forbidden, but an Israelite from a Cuthean is permitted." (R. 86)

It is revealed in such late edition of the Talmud that the recognized name of the Talmudic head is "Nasi" (R. 97), a fact which had been earlier revealed in the Jewish Encyclopedia (R. 103) which also disclosed that Lionel de Rothschild was "for a long time President of the Great Synagogue" and "held intimate relations with Disraeli" (R. 103) whose character Sidonia in Disraeli's book "Coningsby" was "an idealized portrait" of Lionel de Rothschild (R. 103). In Disraeli's said book, published in 1844,—4 years before the Communist Manifesto,—Rothschild, styled "Sidonia," was called "a man without a country," whose only human interest was "Intellect" (R. 104). In Disraeli's said book, it was asserted:

"That mighty revolution which is at this moment preparing in Germany, and which will be, in fact, a second and greater Reformation, and of which so little is as yet known in England, is entirely developing under the auspices of Jews." (R. 76)

"The secret history of the world was his (Sidonia's) pastime. His great pleasure was to contrast the hidden motive, with the public pretext, of transactions." (R. 104)

> "No penal laws, no physical force, can effect that a superior race should be absorbed by an inferior." (R. 105)

> "The world is governed by very different personages from what is imagined by those who are not behind the scenes." (R. 105)

Before the first Zionist Congress of 1897, a book published by its head, Theodor Herzl, titled "The Jewish State," declared:

> "When we sink, we become a revolutionary proletariat, the subordinate officers of the revolutionary party; when we rise, there rises also our terrible power of the purse." (R. 115)

After Bolshevism had laid Russia low, the *Jewish Chronicle* of London boasted (1919) that Bolshevism is "consonant" at many points "with the finest ideals of Judaism" (R. 76). The *American Hebrew* magazine followed (1920) with the assertion that Jewish "mind and heart" were tending "to promote in other countries" what had been done in Russia (R. 78). Four years later (1924), Maurice Samuel, a lecturer under the auspices of the Jewish Welfare Board, published a book "You Gentiles" asserting:

> "We Jews, we, the destroyers, will remain the destroyers forever. Nothing that you will do will meet our needs and demands. We will forever destroy because we need a world of our own, a God-world, which it is not in your nature to build." (R. 94)

Eight years thereafter (1932), Maurice Samuel published another book "Jews on Approval," admitting the hypocrisy of the "God-world" pretext:

> "It is absurd to say that the Jews believed in the return to Palestine because God told them to do so. Since they invented their own God, they must also have invented his commands." (R. 95)

Still more recently (March, 1938), the American Jewish journal *Opinion* (Rabbi Stephen S. Wise, editor) branded as "A Jewish Traitor" a particular Rabbi for having become an "apostle of Christian-Jewish good-will" (R. 128-129), and termed the Rabbi's Christian-Jewish good-will "anti-Jewishness" (R. 129),—according to which false definition Christianity is essentially anti-Jewish.

U. S. — CIVILIZATION. — The book features throughout the importance to the American people, and to the world, of restoring "the true functioning of the American Republic," and putting an end to illegal and destructive innovations, including especially those imported by the so-called New Deal. It shows wherein the campaign pledges of 1932 were really executed in reverse (R. 161-164). It shows the persistence of the New Deal, in defiance of the Constitution and the Supreme Court, and asks a number of pertinent questions:

> "Did not the N.R.A. and the A.A.A. bureaucracies directly retard recovery? Were not both of them held by the Supreme Court to be unconstitutional? Have not other bureaucracies

been instituted, still further retarding recovery? How can American enterprise survive under endless burdens?

"Why was the well-known apostle of scarcity, Henry A. Wallace, given free rein to destroy crops and hogs, and to pay persons for non-raising of crops and hogs? In 1936, Wallace published a book 'Whose Constitution.' One of the obvious purposes was to belittle the very Constitution which he, as Secretary of Agriculture, had taken an oath to support. Some of his slurring assertions were:

> " 'These checks and balances have been of such nature that we have found it necessary to throw them overboard in every time of great emergency.'
>
> " 'Our system employed by any great mature nation in Europe would result in very rapid disaster.' " (R. 231)

"If the American people had been better acquainted with Mr. Wallace's strange ideas, his election as Vice President would hardly have been possible. Why did Roosevelt favor such a running mate unless their views harmonized?" (R. 231)

Petitioner's book further exposed Roosevelt's flaunting of the Constitution, as well as his oath of office, inherent in his official letter of July 5, 1935 (shortly after the Supreme Court's invalidation of the N.R.A.), telling a Congressional Committee (relative to then pending legislation):

> "I hope your Committee will not permit doubts as to constitutionality, however reasonable, to block the suggested legislation." (R. 160-161).

The book also exposed Roosevelt's boast early in 1936 of having "built up new instruments of public power" which he admitted might "provide shackles for the liberties of the people" if in other than New Deal hands (R. 164), such boast constituting an obvious defiance of the Supreme Court's invalidation of the N.R.A. After also reviewing the strange records of Stalin and Churchill, the book asked this pertinent question:

> "Without convicting Roosevelt of willful malfeasance in office, are we not obliged to oppose the committing of the destiny of the American Republic WHOLLY to a Stalin, a Churchill, or a Roosevelt, singly, or to the three jointly? Our Republic is in urgent need, as never before, of an alert and active Congress, and an alert and outspoken Sovereign People!" (R. 232)

The contrast between New Dealism and Americanism is tersely stated near the end of petitioner's book:

> "By maintaining America's independent destiny and Constitutional American Liberty, we will set an example worthy of adoption in other parts of the world. This is the only way in which America can help to create a FREE WORLD. Neither Freedom nor Christianity

> can be implanted anywhere by aggression and force!" (R. 250)

THE LIBEL OF PETITIONER.—On April 11, 1942, less than three months after the publication of petitioner's book "The Road to Victory," Eugene Meyer's newspaper, *The Washington Post*, carried on its front page a leading article regarding a "NAZI PROBE," in which article "Attorney George E. Sullivan" was described as being——

> "himself the author of a defeatist, anti-Jewish book" (R. 5).

No mention was made of the title of any book, nor any discussion or treatment of any definite and precise subject-matter attempted. The article contented itself with casting odium upon "Attorney George E. Sullivan" in his personal, legal and authorship capacities by a listing of him, under a heading "NAZI PROBE," as being——

> "*himself* the author of a defeatist, anti-Jewish book."

The inherent innuendos of disloyalty produced by such wanton stigmatization require no argument. The cleverly fused innuendo and prevarication cannot be excused by any unbiased and reasonably well-informed mind, because there is nothing in the domain of truth to warrant any deduction or even belief that any part of the innuendo or prevarication was well-founded. The published article was as unambiguously defamatory as petitioner's book was un-

ambiguously patriotic and in defense of both Jews and non-Jews from intolerance and persecution.

TRIAL OF LIBEL ACTION IN DISTRICT COURT.—Petitioner's complaint in libel sought compensatory and punitive damages because of the combined prevarication and innuendo of disloyalty (R. 2). Meyer admitted the publication, but claimed (1) that the article was fair comment upon petitioner's book "The Road to Victory" which was not even named in the article, and (2) that the article was true (R. 9); but in each so-called defense Meyer disclaimed altogether innuendos of disloyalty (R. 9). At the trial, Justice Goldsborough overruled petitioner's objection to three members of the jury who were Federal employees and subject to dismissal at any time by the New Deal Administration (R. 10-12). Petitioner contended that disqualification was imputed as matter of law under the "special and exceptional case" doctrine carefully preserved in *United States v. Wood*, 299 U. S. 123, 81 L. ed. 78, no matter what such a Federal employee might say as to lack of fear of dismissal, because an admission of such fear would invite possible, if not certain, dismissal. Notwithstanding the unambiguous nature of both Meyer's article and petitioner's book, showing the article to be an utterly unwarranted use of innuendo and prevarication to assassinate petitioner's character, the District Court granted, over petitioner's objection (R. 43), the following instruction requested by Meyer:

> "The jury are instructed that the truth is an absolute defense in an action of libel, and if they

> find that 'The Road to Victory' was in fact a defeatist, anti-Jewish book, as those words would be understood by ordinary readers of *The Washington Post*, their verdict must be for the defendant." (R. 31)

Leeway was thus granted to a jury, with three members owing their jobs to continued favorable consideration by the New Deal Administration, to give the article and the book, respectively, such meaning as they might determine, including the meaning claimed by Meyer in his pleading as to the article that it did not impugn petitioner's loyalty, notwithstanding the Court itself had definitely determined and declared to counsel (out of the jury's hearing) that the article unquestionably did have the effect of impugning petitioner's loyalty, the Court's declaration being:

> "We are right in the midst of a war and everyone is intensely concerned about it. Now, at this particular time, to say that a man wrote a defeatist book is almost like calling a man a traitor; guilty to be punished for treason. It doesn't seem to me it is a question of anything except as to whether or not it is a defeatist book. In other words, suppose he said he wrote a worthless book. That simply means that he didn't use good judgment in writing the book, but it does not separate him from the rest of society. It doesn't point the finger of condemnation, universal condemnation, on him, like the word 'defeatist,' when we are in the midst of a war." (R. 45)

The Court should have rejected the defense of truth, as well as the defense of so-called fair comment, because Meyer's denial made in each plea as to the innuendo of disloyalty necessarily collapsed with the Court's unavoidable finding that the article did unquestionably impugn petitioner's loyalty, no basis for impugning which was pleaded by Meyer. It is fundamental that a plea of justification must be as broad and complete as the subject-matter required to be met, or it cannot prevail. Even if the jury had possessed no biased or disqualified members, the American maxim of "Equal Justice Under Law" required the Court to make its own determination effective, instead of granting leave to a jury to determine otherwise as they might see fit. The Court was no more warranted in granting such leave to a jury than was Pilate warranted in setting aside his own judgment regarding the Divine Saviour and leaving the decision elsewhere. Meyer dared not contend in Court that there was any real basis for impugning petitioner's loyalty as the published article had plainly done, and which impugning he has never corrected with the general public, yet he sought and obtained an instruction which would enable the jury to defeat petitioner by qualified construction and interpretation of a perfectly unambiguous defamation.

ACTION OF UNITED STATES COURT OF APPEALS.—In lieu of an opinion such as is contemplated by law, from which the true nature of the case could be understood, the United States Court of Appeals for the District of Columbia used language as general as the original libel itself, the opinion saying: (1) that the contents of the book sufficiently

support the jury's verdict, and (2) that the published article was "at least a reasonable opinion" entitling Meyer to a directed verdict on the issue of fair comment (R. 253). This is such a plain miscarriage of justice, in both form and substance, as to strongly suggest the need for the giving to that Court by this Court of some standards governing libel cases, with particular reference to avoidance of misapplication of the doctrine of fair comment. Back in 1936, said Court of Appeals (Justice Stephens speaking) delivered an illuminating opinion, *Washington Times Co.* v. *Bonner*, 66 App. D. C. 280, 86 F. 2d 836, explaining and upholding the sound majority rule governing fair comment supported by a Federal decision written by Judge Taft when a Circuit Judge and by a State decision written by Judge Holmes when on the Supreme Court of Massachusetts, namely, "that the right of fair comment does not extend to misstatements of fact," and also explaining the unsound minority rule to the contrary supported by a Kansas decision as the leading case for it. In the following year, 1937, said Court of Appeals rendered another opinion (written by another Justice, since deceased) which opinion departed entirely from the sound doctrine of the Bonner case, and undertook to absolve Eugene Meyer of all liability for an obviously injurious libel, in the face of obvious distortion of facts admitted by Meyer's own demurrer, notwithstanding which admission the exonerating opinion unwarrantedly stated that Meyer had gone no further than "legitimate comment or criticism," yet lauded the other party's high motives. *Sullivan* v. *Meyer*, 67 App. D. C. 228, 91 F. 2d 301. In a still more recent case, *Sweeney* v. *Patterson*, 76 U. S. App. D. C. 23,

128 F. 2d 318, decided in 1942, (opinion by Justice Edgerton, of Kansas), the Kansas decision aforesaid, *Coleman* v. *MacLennan*, 78 Kan. 711, which is the leading case upholding the unsound minority rule, was cited in support of attempted qualification of the sound majority rule approved in the earlier Bonner case, yet the Court of Appeals took occasion to explain that it had misapprehended the matter before it in the earlier *Sullivan* v. *Meyer* case, saying:

> "His (Sullivan's) complaint stated that he had asked the Board of Education (1) to drop from the school curriculum a book which he said gave a false picture of Russian communism and (2) to give the pupils the truth about the matter instead. It alleged that the defendant's newspaper had so distorted the facts as to make it appear that the plaintiff sought to prevent pupils from knowing anything about Russia. The defendant demurred. Since his article represented Sullivan as an advocate of ignorance, and the whole matter as 'farcical,' it was obviously injurious to Sullivan's reputation." (p. 25)

The Court added:

> "Though the Court characterized the article as criticism or comment, the opinion and the record show that the complaint charged the defendant with injurious distortion of the facts. If, as was necessarily assumed on demurrer, the complaint was true, the defendant did distort the facts." (p. 25)

However, instead of declaring that earlier *Sullivan* v. *Meyer* case to be overruled as improvident, the Court of Appeals proceeded to utilize it as supporting an attempted adoption of a portion of the minority rule in behalf of freedom to make injurious distortion of facts without liability therefor. It is evident from the opinion in *Sweeney* v. *Patterson, supra,* that the United States Court of Appeals for the District of Columbia does not seem to grasp that, instead of the law of libel curtailing freedom of speech, it is a necessary safeguard for such freedom to prevent the perversion of the same into licentiousness. The generosity shown to Meyer in the previous *Sullivan* v. *Meyer* case was obviously an unfortunate contribution to licentiousness, because any libel "obviously injurious to Sullivan's reputation" and based upon "injurious distortion of facts" could not be otherwise than libel *per se*. It is particularly unfortunate that such generosity was shown a person defaming a patriotic defender of Americanism while the defamer was lauding Russian communism as "the most dramatic experiment in government of, for, and by the people in modern history" (record in earlier *Sullivan* v. *Meyer* case). The decision of said Court of Appeals in the present *Sullivan* v. *Meyer* case appears to be an even greater and more unfortunate contribution to licentiousness, of which Meyer is the beneficiary. Said Court can hardly be warranted in holding that the jury had a right to sanction, as well-founded, an impugning of petitioner's loyalty, which was inherent in the published article, when Meyer himself disclaimed such contention in his pleadings and, in addition, put his writer Stokes on the stand to disavow such a claim (R. 26), nor can the plain

truth be ignored that the article (whether so intended or not) did impugn petitioner's loyalty, for which Meyer ought not to escape payment of compensatory damages. To say that it was "at least a reasonable opinion" on the part of Meyer for which he can make petitioner suffer can be reconciled only with the unsound minority doctrine of Kansas, from which State the writer of the recent opinion of said Court of Appeals hails. The law of libel at least in the Federal Courts must not shift in accord with personal tendencies of changing Justices. Standards are needed, and, when established, they should remain so until changed by the legislature. Otherwise, law becomes capricious, and "Equal Justice under Law" a mockery.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, Chap. 229, Sec. 1 (43 Stat. 938; 28 U. S. C. A., Sec. 347). The judgment of the United States Court of Appeals for the District of Columbia was entered February 29, 1944 (R. 254).

QUESTIONS PRESENTED

1. Whether fair comment extends to misstatement or distortion of fact.

2. Whether a Court may justifiably leave it to a jury to interpret as non-libelous, matter which is as unambiguous as it is libelous.

3. Whether a Court may justifiably leave it to a jury to treat as improper or objectionable a legal

and historical book which every legal mind should know to be entirely proper and legitimate.

4. Whether a judicial opinion may justifiably be utilized to give new life to libelous matter, instead of stating the facts of the case showing that the libelous innuendo was disclaimed by the publisher in Court, though never retracted in the publisher's columns.

5. Whether justification in libel can be effectual unless as broad and complete as the libel itself.

6. Whether the right to a fair and impartial jury is violated when the subject-matter under consideration is a book strongly criticizing the New Deal plan or program, and the author's objections are overruled to service on the jury of persons who are Federal employees in a New Deal administration and have no tenure of office.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

(1) The United States Court of Appeals for the District of Columbia has so far departed from the accepted and usual course of judicial proceedings, and also so far sanctioned such a departure by the lower Court, as to call for an exercise of this Court's power of supervision.

(2) The United States Court of Appeals for the District of Columbia is attempting to change the long-settled rule in the Federal Courts and in most of the State Courts as to the scope of the right of fair comment.

(3) The United States Court of Appeals for the District of Columbia has not given proper effect to

the decision of this Court in *Frohwerk* v. *United States*, 249 U. S. 204, 208, 63 L. ed. 561, 565, upholding the right of the citizen to condemn either measures or men in wartime.

(4) The United States Court of Appeals for the District of Columbia has not given proper effect to the decision of this Court in *United States* v. *Wood*, 299 U. S. 123, 81 L. ed. 78, relative to disqualification of jurors under the "special and exceptional case" doctrine expressly alluded to in that decision to ensure a fair and impartial jury.

WHEREFORE, it is respectfully prayed that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Appeals for the District of Columbia, commanding that Court to certify and send to this Court for its review and determination, a full and complete transcript of the record and proceedings in the case at bar, their number 8525, and that the judgment of said United States Court of Appeals for the District of Columbia may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as this Honorable Court may deem just and proper.

And your petitioner will ever pray.

GEORGE E. SULLIVAN,
Petitioner.

By
WILLIAM J. NEALE,
GEORGE E. SULLIVAN,
Counsel for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. .....

GEORGE E. SULLIVAN,
Petitioner,
v.
EUGENE MEYER

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia has not been officially reported, but it will be found at page 253 of the record.

II.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by

the Act of February 13, 1925, Chap. 229, Sec. 1 (43 Stat. 938; 28 U. S. C. A., Sec. 347). The judgment of the United States Court of Appeals for the District of Columbia was entered February 29, 1944 (R. 254).

III.

STATEMENT OF CASE

A full statement of the case is included in the petition.

IV.

SPECIFICATIONS OF ERRORS INTENDED TO BE URGED

(1) The United States Court of Appeals for the District of Columbia erred in holding that appellee was entitled to a directed verdict on the issue of fair comment.

(2) The United States Court of Appeals for the District of Columbia erred in holding that the District Court correctly instructed the jury:

> "The jury are instructed that the truth is an absolute defense in an action for libel, and if they find that 'The Road to Victory' was in fact a defeatist, anti-Jewish book, as those words would be understood by ordinary readers of *The Washington Post*, their verdict must be for the defendant." (R. 31)

(3) The United States Court of Appeals for the District of Columbia erred in holding that the con-

tents of the book "The Road to Victory" sufficiently support the jury's verdict.

(4) The United States Court of Appeals for the District of Columbia erred in holding that it was "at least a reasonable opinion" that said book was "defeatist as well as anti-Jewish."

(5) The United States Court of Appeals for the District of Columbia erred in refusing to hold that appellant had an undoubted right to recover compensatory damages against appellee.

(6) The United States Court of Appeals for the District of Columbia erred in failing to hold that appellant was denied a fair and impartial jury through inclusion of three disqualified members.

(7) The United States Court of Appeals for the District of Columbia erred in affirming the judgment of the District Court of the United States for the District of Columbia.

V.

ARGUMENT

(a) EXTENT OF FAIR COMMENT.—Under the sound majority rule long prevailing in Federal Courts and in most State Courts, fair comment does not extend to misstatement or distortion of fact. *Post Pub. Co.* v. *Hallam* (C.C.A.), 59 F. 530, (Opinion by then Circuit Judge Taft); *Burt* v. *Advertiser Newspaper Co.*, 154 Mass. 238, 28 N. E. 1, (Opinion by Judge Oliver Wendell Holmes); *Washington Times Co.* v. *Bonner*, 66 App. D. C. 280, 86 F. 2d. 836, (Opinion by Justice Stephens), explaining and re-

jecting the minority or Kansas rule represented by *Coleman* v. *MacLennan*, 78 Kan. 711, 98 P. 281). The minority or Kansas rule has apparently interested the United States Court of Appeals for the District of Columbia favorably only since Justice Edgerton, of Kansas, became a member of that Bench; but it has since then become so enamored of the unsound minority rule that it has, in an opinion by Justice Edgerton in *Sweeney* v. *Patterson*, 76 U. S. App. D. C. 23, 128 F. 2d 457, actually cited as an approved authority on fair comment the very Kansas decision, *Coleman* v. *MacLennan supra*, which had been identified in *Washington Times Co.* v. *Bonner supra* as "The leading case representative of that (minority) view" then emphatically rejected. The majority rule is obviously necessary to safeguard freedom of expression and prevent it from degenerating into licentiousness. Under such majority rule, a necessary safeguard is maintained against the silencing of freedom under the pretense of giving greater freedom. Comment upon disclosed facts may be freely made, the facts disclosed constituting an antidote for any overzealous comment, but without a disclosure of the facts, or (what is worse) with a misstatement or distortion of the facts embodied in the comment or accompanying it, the doctrine of fair comment is not applicable. Criticism must be founded on truth, and false statements or attacks on private character are not permitted. *Ott* v. *Murphy*, 160 Iowa 730, 141 N. W. 463. In the case at bar, the libelous article avoided giving the *name* of any book or giving any disclosure of the real scope and contents of any book, but was content with *nam-*

ing the person sought to be defamed and making use of innuendo and prevarication for the purpose.

(b) RIGHT OF CRITICISM IN WARTIME.— The upholding of this right by this Court in *Frohwerk* v. *United States*, 249 U. S. 204, 208, 63 L. ed. 561, 565, is seriously impaired if perversions of the settled rule regarding fair comment not extending to misstatement or distortion of fact shall be tolerated, because, in such event, powerful publishers can readily silence intelligent individual patriotism by the use of clever innuendo and shameless prevarication to impugn the loyalty of, or otherwise injure, such individuals. The case at bar, as well as the earlier case of *Sullivan* v. *Meyer*, 67 App. D. C. 228, 91 F. 2d 301, illustrate in a practical way just how this may be done, and that the obtaining of redress is hopeless unless this Honorable Court exercises its power of supervision to put an end to the giving of judicial sanction to such performances. This Honorable Court has been exceptionally alert against every type of foul blow against the rights of the citizen, whether delivered in or out of Court. In *Viereck* v. *United States*, 318 U. S. 236, relief was given against what this Court did not hesitate to denounce as a "foul blow" delivered in the course of judicial proceedings, and it did not treat it as any less a foul blow because the United States Court of Appeals for the District of Columbia declined to give relief against it.

(c) EQUAL JUSTICE UNDER LAW REQUIRES JUDGES TO MAKE LEGAL RULINGS AND MAKE THEM EFFECTIVE, AND NOT LEAVE IT TO JURIES TO MAKE SUCH LEGAL RULINGS ABORTIVE. — The leading

case on this point, as applied to libel, is *Commercial Pub. Co.* v. *Smith*, 149 F. 704, 79 C.C.A. 410, quoted with approval by this Honorable Court in *Washington Post Co.* v. *Chaloner*, 250 U. S. 290, 63 L. ed. 987.

(d) JUSTIFICATION IN LIBEL MUST BE AS BROAD AND COMPLETE AS THE LIBEL ITSELF. — This fundamental rule is well stated in *Grand Union Tea Co.* v. *Lord*, 231 F. 390, 394 (C.C.A. 4th Cir.). Since appellee in the case at bar disclaimed justification of innuendos impugning appellant's loyalty, electing instead to deny such impugning, and since such denial is at variance with the obvious nature and character of the libel, it followed that the attempted justification was in any event too narrow and insufficient,—a perfectly obvious condition, which, however, neither the District Court nor the Court of Appeals seems to have been able to comprehend.

(e) JUDGMENT FOR PETITIONER REQUIRED FROM ANY LEGAL STANDPOINT.— Not only is there no possible basis in the pleadings or evidence for a judgment in behalf of appellee, but, on the contrary, there is no conceivable legal standpoint warranting other than a judgment for appellant. The display heading "NAZI PROBE" used in libeling appellant was neither inadvertent nor irrelevant. It gave one meaning only to the words "*himself* the author of a defeatist, anti-Jewish book," namely, that the loyalty of a person was impugned. As stated in the leading case of *Commercial Pub. Co.* v. *Smith supra*,——

"the whole item, *including display lines*, should

be read and construed together, and its meaning and significance thus determined."

Of what value, therefore, is the opinion of the Court of Appeals in the case at bar which, in the face of the plain record to the contrary, assumes the existence of a basis for "a reasonable opinion" by appellee that appellant's book "was defeatist as well as anti-Jewish"? The book throughout demands victory, not defeat, for our Republic and for Americanism. It urges also fair and constructive remedies to rescue Jews and non-Jews from the organized intolerance, persecution and greed of Talmudists, who were known as Pharisees in the time of the Divine Saviour and were denounced as wicked foes of all humanity by the Divine Saviour, who loves all mankind. There is no conceivable basis for any impartial legal mind to consider appellant's book as either defeatist or anti-Jewish. Truth cannot be anti-anything except anti-falsehood.

(f) FAIR AND IMPARTIAL JURY DENIED PETITIONER.—The denial of this right by the District Court (R. 10-12) passed unnoticed by the Court of Appeals in virtue of the latter's acceptance of the fair comment defense of appellee which the District Court had rejected. Such denial affected a substantial right of appellant, which is going to be important to him even when his unquestioned right to a recovery is recognized by direction of this Honorable Court, because appellant will be entitled to have his damages assessed by a fair and impartial jury. In *United States* v. *Wood*, 299 U. S. 123, 81 L. ed. 78, involving a conviction of larceny "from a pri-

vate corporation" (p. 131), this Court, in holding a Government employee not disqualified to sit as a juror, was careful to say that disqualification might exist in "some special and exceptional case" (p. 150). It is difficult to conceive of any more obviously "special and exceptional case" than the case at bar, yet the District Court insisted upon permitting three Federal employees in a New Deal administration to serve on a jury to supposedly give fair and impartial consideration to appellant's book strongly criticizing the New Deal program. Must not disqualification be imputed as matter of law and common sense in such a situation, no matter what such Federal employees may say as to lack of fear of dismissal, when it is perfectly obvious that a public admission of such fear might itself endanger such dismissal? Such Federal employees of the Executive Branch were not made independent by any protective tenure of office as are Federal Justices.

CONCLUSION

It is submitted that the writ of certiorari should be granted, and that this Honorable Court should review the judgment of the United States Court of Appeals for the District of Columbia in the case at bar and, finally, reverse it.

WILLIAM J. NEALE,

GEORGE E. SULLIVAN,

Counsel for Petitioner.

Office - Supreme Court, U. S.
FILED
MAY 2, 1914
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1913.

No. 888.

GEORGE E. SULLIVAN, *Petitioner*,

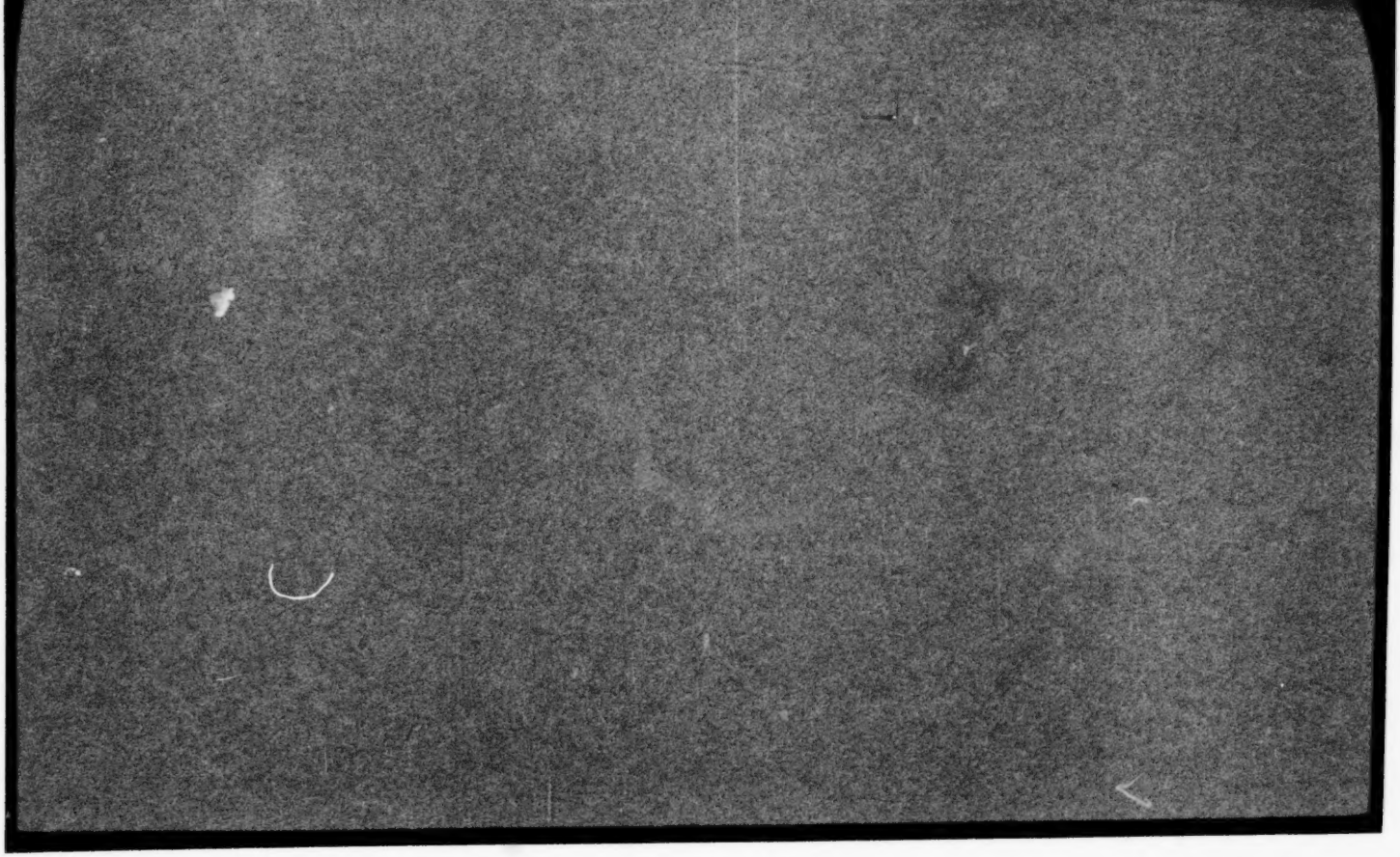
v.

EUGENE MEYER, *Respondent*.

BRIEF OF RESPONDENT EUGENE MEYER IN OPPOSITION TO PETITION FOR CERTIORARI.

SPENCER GORDON,
Attorney for Eugene Meyer, Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.



IN THE

Supreme Court of the United States

October Term, 1943.

No. 888.

GEORGE E. SULLIVAN, *Petitioner,*

v.

EUGENE MEYER, *Respondent.*

BRIEF OF RESPONDENT EUGENE MEYER IN OPPOSITION TO PETITION FOR CERTIORARI.

STATEMENT.

In this case the United States Court of Appeals for the District of Columbia affirmed a judgment entered by the District Court based on the verdict of a jury in favor of the defendant below.

The plaintiff George E. Sullivan (the present petitioner) had brought suit for libel on the ground that the defendant Eugene Meyer (the present respondent) had published in *The Washington Post* that Attorney George E. Sullivan was the "author of a defeatist, anti-Jewish book" (R. 3, 5).

The defendant filed pleas of fair comment and truth (R. 9).

The book which was entitled "*The Road to Victory*" was read to the jury by the plaintiff. It was in fact defeatist and anti-Jewish as excerpts will demonstrate.

As to the Jews Mr. Sullivan said:

> "* * * Most people have always regarded Judaism as a religion—the original Hebrew religion dedicated to the worship of God and to obedience to God's Commandments. There has been no thought that Judaism is, or might be, a criminal substitute for religion, as it surely must be if it is consonant with Bolshevism." (R. 79)
>
> "* * * Civilization cannot tolerate organized criminality or Brigandry under the name of Bolshevism, Judaism, or any other name or guise." (R. 79)
>
> " * * * **'The study of Judaism is that of the Talmud, as the study of the Talmud is that of Judaism.** To wish to understand one without entering upon the explanation of the other is chimerical. They are two inseparable things, or better, THEY ARE ONE AND THE SAME.' "* (R. 80)
>
> "* * * In this recent 8-volume set, deposited in the Library of Congress, will be found real and incontrovertible evidence concerning the so-called 'social system' or 'world of its own'—in reality a CRIMINAL SYSTEM FOR WORLD CONQUEST—outlined in the Talmud." (R. 82)
>
> "Consequently, it is not surprising to find shameless degradation of womanhood wherever the Talmudic influence has penetrated." (R. 89)
>
> "Those who want civilization rescued from the Talmudic system should not be deceived by subterfuges. They should be particularly alert against deception through the tricky mis-use of the term 'Orthodox' in connection with Judaism to make it appear that Orthodox Judaism is anti-Talmudic. 'The Talmud is the

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* Capitals and black face type here in these quotations are as in the book.

accepted authority for Orthodox Jews everywhere.' (Columbia Encyclopedia, 1938, under title 'Talmud'.) The recognized Jewish authority, Darmesteter, has made very plain that Judaism and the Talmud are 'ONE AND THE SAME' * * *" (R. 99-100)

"The alarming extent to which Talmudists have been assuming official positions in our Republic should not be overlooked, particularly as the criminal system of Talmudism renders them patently ineligible to hold office in any civilized nation." (R. 243)

It may fairly be said that the foregoing statements as to the Jews, published during the war, are in themselves "defeatist", as well as "anti-Jewish", for the publication of any book which tends to divide Americans, and which stirs up racial hatred towards a minority, plays directly into the hands of an enemy whose policy is to divide and conquer. But the defeatism expressed by the author goes far beyond his anti-Jewish expressions.

In the first chapter, which was written after the Japs had attacked Pearl Harbor, and after Germany and Italy had declared war on the United States (R. 16), Mr. Sullivan said:

"Let us have no more talk about a temporary total eclipse of our Republic through so-called 'total defense'. Such a proposition borders on treason!" (R. 61-62)

"Of all the deceptive misnomers, so-called TOTAL DEFENSE is the worst, because it really means NATIONAL SUICIDE." (R. 62)

"The flower of American manhood stands always ready to make the supreme sacrifice for the defense of our Republic. Infused with the spirit of America, they will always be invincible. Many of them died in vain in 1917 and 1918. They thought they were giving their lives 'TO MAKE THE WORLD SAFE FOR DEMOCRACY.' Instead, the world was being prepared for a Communist takeover!" (R. 63)

In subsequent chapters, which were written before Pearl Harbor but which were published in 1942 with the new first chapter, Mr. Sullivan stated:

> "Clinton Roosevelt, Theodore Roosevelt and Franklin D. Roosevelt have all sought to change the course of our great Ship of State. Is it only a coincidence that the changed course advocated by each has not been out of harmony with the British-Talmudic plans?" (R. 173)

> "* * * No nation can preserve its independence if it merges its destiny with any other nation or group of nations." (R. 217)

> "* * * If the British people were really free, it is inconceivable that they would tolerate Winston Churchill at the British helm. His own shamelessly expressed coldbloodedness matches that of the Talmudic program itself, * * *" (R. 223)

> "* * * Roosevelt made very plain that he and Churchill were in perfect harmony about this program. Before the program gets under way, it might be well for American men and boys to take one last look at an American fireside, for they may never see one again." (R. 233)

> "* * * But the enormity and character of the Roosevelt-Churchill proposals are truly shocking. Whatever their purposes, could any results be reasonably possible except the 'practical bankruptcy' comprehended in the Lenin-Stalin strategy? Is practical common sense, and a determination to save our Republic as one corner at least of Civilization, properly denominated 'defeatism'?* If we are to prepare for the surrender or destruction of our Republic, and of Constitutional American Liberty, why use a backdoor method involving mass slaughter of the flower of American manhood in various parts of the world on an **internationalist** crusade of such gigantic proportions as Roosevelt and Churchill have proposed? If we must lose everything for which our American people have labored,—their

---

* Here Mr. Sullivan recognizes that the policy he advocates may be called defeatism.

life savings, their homes, their businesses, their automobiles, etc.,—why not let us have the satisfaction of losing them in a valiant defense of the American Republic, instead of having them dissipated in a strange internationalist crusade to liberate subjugated nations, which cannot conceivably result in any victory **except for Talmudism?"** (R. 233-234).

"Neither in the winning of the war, nor in the restoration of the Republic, can we permit wisdom, integrity or truth to be supplanted by rashness, subterfuge, or deception. Britain's unkept promises of 'all aid' to Poland, Finland and Greece are not more to be regretted than the recent Roosevelt pledge to 'redeem' the Filipinos by the use of—

" 'The **entire** resources in men and material of the United States.' Much of the resources in men and material of the United States are urgently needed today for the defense of Continental United States, if our Republic is to survive. If our 'entire resources' are to be used to 'redeem' an Asiatic possession which an earlier Roosevelt tricked us into acquiring, how much of those resources will remain to defend and maintain Continental United States, so absolutely essential to the survival of our Republic? If lives of American manhood are to be sacrificed to an extent that may prevent further defense of our Republic against enemies within and without, those sacrificed should at least be accorded the glory of dying in a real defense of the Republic within, or in the vicinity of, the Republic itself, rather than in a far-flung Asiatic possession which never should have been acquired in the first place. Enemies of our Republic may want our men and resources sunk in the Pacific Ocean on such a gigantic scale that our take-over will be easy, but those who have taken oaths to defend our Republic should not, wittingly or unwittingly, make such catastrophe possible." (R. 236)

The book is defeatist and anti-Jewish from one end to the other, as may readily be ascertained by an inspection of the copies which have been filed with the record.

At the conclusion of the plaintiff's case, and after the book had been read to the jury, counsel for the defendant

moved for an instructed verdict on the ground that the article constituted fair comment on a matter of public interest and that no malice had been shown. This motion was denied. (R. 20)

The defendant thereupon put in his case, at the conclusion of which the Court denied instructions submitted by Mr. Sullivan which would have been tantamount to a directed verdict for the plaintiff (R. 32), denied an instruction to direct a verdict for the defendant (R. 33), denied instructions submitted by the defendant on the plea of fair comment (R. 33), and submitted the case to the jury only on the issue of truth (R. 30, 31). The jury found for the defendant, thus necessarily finding that the book was in fact a "defeatist, anti-Jewish book."

A motion for new trial was denied (R. 52).

Mr. Sullivan appealed, raising various points which had to do with the conduct of the trial (R. 52).

The Court of Appeals affirmed the judgment below, stating:

> "The court correctly instructed the jury that 'the truth is an absolute defense in an action for libel, and if they find that ' 'The Road to Victory' ' was in fact a defeatist, anti-Jewish book, as those words would be understood by ordinary readers of The Washington Post, their verdict must be for the defendant.' The contents of the book, which are in the record, sufficiently support the jury's verdict. Since that is the case, the Post's opinion that the book was defeatist as well as anti-Jewish was at least a reasonable opinion; and since there was no evidence that the words were used in bad faith or with a bad motive, the court might very well have directed a verdict for appellee on the issue of fair comment which we think it incorrectly ruled out of the case. *Potts* v. *Dies,* 77 U. S. App. D. C. 92, 132 F. 2d. 734." (R. 253.)

ARGUMENT.

The case involves no federal question, and has no general importance.

It was correctly decided, for *"The Road to Victory"* was clearly a defeatist, anti-Jewish book.

Respectfully submitted,

SPENCER GORDON,
Attorney for Eugene Meyer,
Respondent.

Office - Supreme Court, U. S.
FILED
MAY 10 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 888

GEORGE E. SULLIVAN,
Petitioner,

vs.

EUGENE MEYER,
Respondent.

REPLY BRIEF FOR PETITIONER AS TO CERTIORARI ALLOWANCE

WILLIAM J. NEALE,
GEORGE E. SULLIVAN,
Counsel for Petitioner.

SUBJECT INDEX

	Page
I. Reply to "anti-Jewish" charges in respondent's brief	1-13
II. Reply to "defeatist" charges in respondent's brief	13-21

IN THE

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REPLY BRIEF FOR PETITIONER AS TO CERTIORARI ALLOWANCE

Instead of responding, seriatum or otherwise, to the accurate, fair, truthful, and orderly-arranged showing in the petition for certiorari, respondent's brief indulges in adroit evasion, confusion, distortion and subterfuges for re-defamation of petitioner.

If patriotic defenders of fundamental Americanism have no rights which their defamers are obliged to respect in or out of Court, the American people are entitled to know it through a pronouncement from the highest Court. Refusal by this Court to do anything about such a serious matter is incon-

ceivable, particularly as it is obvious that its non-action would be widely interpreted as *approval* of the perversion of FREEDOM into LICENTIOUSNESS in the domain of published expressions, at least as against defenders of fundamental Americanism—a condition wholly incompatible with the high dignity of this Court.

The subterfuges resorted to in respondent's brief to circumvent petitioner are in striking accord with the intolerant and outrageous teaching of the Pharisaic Talmud:

> "Where a suit arises between an Israelite and a heathen, if you can justify the former according to the laws of Israel, justify him and say: 'This is *our* law'; so also if you can justify him by the laws of the heathens justify him and say (to the other party): 'This is *your* law'; but *if this cannot be done, we use subterfuges to circumvent him.*" (R. 86, quoting from Baba Kamma 113a.)

The American doctrine of "Equal justice under law" must not give way to such Talmudic doctrine. If the American people were permitted to know the authentic truth about Talmudism, and the special clique of Talmudists (originally "Pharisees") behind it, dedicated to organized greed, hate and intolerance, and by no means synonymous with the Jewish people—as painstakingly revealed, from authentic sources, in petitioner's book "The Road to Victory" (pp. 4-13 of petition, with record citations and quotations)—the American people would see to it,

by effective measures, that no Talmudist—whether Jew or non-Jew—ever again obtained public office or polluted the newspaper field or any other sphere of public or quasi-public activity. The American people would then be in possession of the *full truth*, that Talmudists are really foes of both Jews and non-Jews, and are chiefly responsible for anti-Semitism, instead of the *part-truth only* fiendishly used by Hitler to stir up racial hatred for the cunning advantage of another special clique, the Nazi gangsters, who are really organized foes of both Germans and non-Germans while hypocritically claiming to be synonymous with the German people, just as the Talmudists have long screened their real nature and character by pretending to be synonymous with the Jewish people. As petitioner's book points out:

> "All super-race pretexts for world-conquest reduce the so-called super-race to quasi-enslavement in the process of effecting complete enslavement of other races." (R. 69)
>
> "No matter how much power or territory a brigandry group may acquire, it can never constitute a nation, race or religion, or rise above the status of a *criminal* sect or band." (R. 70)
>
> "A criminal system cannot create a race. Only God can create a race. The international band or gang, which these International Brigands persist in calling 'Jews,' should really be called 'Talmudists,' to avoid stigmatizing, as members of the band or gang, many persons of Jewish stock who indignantly spurn the Talmudic plot." (R. 243)

> "It should also be borne in mind that the 'Talmudists' include many persons not of Jewish stock at all, but who have become enamored of the brigandry features of Talmudism." (R. 243)

Petitioner's book demonstrates, from the tenets of the Talmud itself, that it is a criminal system, rather than a religion, (R. 82-93), and shows how the attempt in the time of the Divine Saviour to palm off on the Jewish people the "doctrine of the Pharisees"—Talmudism—as Jewish "tradition" was denounced by the Divine Saviour, who told the Pharisees:

> "You have made void the commandment of God for your tradition" (R. 96),

and warned the Jewish people:

> "Beware of the leaven (doctrine) of the Pharisees" (R. 96).

Notwithstanding the fact that petitioner's book, from beginning to end, differentiated between "Talmudists" and "Jews," and urged the rescue of Jews and non-Jews from the Talmudic yoke of enslavement, respondent's brief has the effrontery to indulge in the bare-faced prevarication that petitioner's book "tends to divide Americans," "stirs up racial hatred towards a minority," and "plays directly into the hands of an enemy whose policy is to divide and conquer" (p. 3 of respondent's brief), and to add that the book is "anti-Jewish from one end to the other" (p. 5 of respondent's brief). Respondent seeks in his brief to support such prevarication by an adroit and unscrupulous

lifting out of context of seven incomplete excerpts, and to give each of such excerpts a misapplied meaning by the use of an introductory clause devised by respondent, saying:

> "As to *the Jews* Mr. Sullivan said:" (p. 2 of respondent's brief).

The following quotation shows in ordinary type the first incomplete excerpt and in heavy type the pertinent matter which respondent omitted:

> "BUT THE EVEN MORE SERIOUS MATTER FOR CONSIDERATION IS THE FACT THAT PROMINENT JEWISH JOURNALS IN BRITAIN AND AMERICA DISPLAYED BOASTFUL AND UNRESTRAINED ENTHUSIASM IN FAVOR OF BOLSHEVISM, AND THAT BOLSHEVISM WAS EXPRESSLY CLAIMED BY AT LEAST ONE OF THEM TO BE 'CONSONANT WITH THE FINEST IDEALS OF JUDAISM.' Most people have always regarded Judaism as a religion—the original Hebrew religion dedicated to the worship of God and to obedience to God's Commandments. There has been no thought that Judaism is, or might be, a criminal substitute for religion, as it surely must be if it is consonant with Bolshevism." (R. 78-79.)

The omitted matter had to be omitted by respondent in order to carry out his purpose to deceive and circumvent, because such omitted matter would have made manifest that the book was merely dealing

factually with a strange condition calling for exploration and explanation in the interest of Jews and non-Jews. Such omitted matter would also have caused any alert person reading it to check back to earlier portions of petitioner's book, and learn: (1) the diabolical nature of Bolshevism as reported to the House of Commons by Churchill in 1919 (R. 67-68), and also as exposed in official U. S. Department of State publication of 1931 "Foreign Relations of the United States, 1918, Russia I" (R. 74), and (2) the strange lauding of Bolshevism as "consonant with the finest ideals of Judaism" in *The Jewish Chronicle* (London) of April 4, 1919 (R. 76), followed by further laudation of Bolshevism in the succeeding year (1920) by the *American Hebrew* magazine (R. 78); clearly indicating the alarming extent to which recognized Jewish sources had been penetrated by the forces behind Bolshevism.

The following quotation carries in heavy type the matter which respondent omitted from his second incomplete excerpt and in ordinary type such second incomplete excerpt:

> "WHEN JUDAISM IS PROCLAIMED BY ITS OWN LEADERS TO BE CONSONANT WITH BOLSHEVISM, AND BOLSHEVISM IS AT THE SAME TIME LAUDED BY SUCH LEADERS, IT BECOMES INCUMBENT UPON ALL FOLLOWERS OF JUDAISM, AS WELL AS ALL OTHERS, TO INVESTIGATE THE TRUTH OR FALSITY OF SUCH PROCLAMATION. IF JUDAISM IS CONSONANT WITH BOLSHEVISM, JUDAISM CANNOT BE HEBRAISM, BUT MUST

> BE A CRIMINAL SUBSTITUTE FOR HEBRAISM WHICH TAUGHT AND HONORED THE COMMANDMENTS OF GOD. A HYPOCRITICAL DISGUISE AS A 'SOCIAL SYSTEM' OR 'RELIGION' CANNOT GIVE IMMUNITY TO ANY ORGANIZED CRIMINALITY. THIS THEN BECOMES THE NEXT STEP IN OUR INVESTIGATION. Civilization cannot tolerate organized criminality or Brigandry under the name of Bolshevism, Judaism, or any other name or guise." (R. 79)

The third incomplete excerpt attempts to put into petitioner's mouth as something said against "the Jews" an authentic quotation from Arsene Darmesteter's essay "The Talmud" recently reprinted by The Jewish Publication Society of America (R. 80-81), which authentic quotation was introduced in petitioner's book (though not in respondent's brief) with the following preceding explanation:

> "IMMEDIATELY AFTER STARTING SUCH INQUIRY, WE ARE STARTLED TO LEARN, FROM AN AUTHORITATIVE ESSAY ON 'THE TALMUD' BY ARSENE DARMESTETER, WHO HAS LONG BEEN RECOGNIZED IN JEWISH CIRCLES AS AN AUTHORITY ON THE TALMUD, THE FOLLOWING DEVASTATING ADMISSION:"

Respondent's said third incomplete excerpt, which was lifted out of the context in order to attribute it to petitioner rather than to Darmesteter, was:

> "THE STUDY OF JUDAISM IS THAT OF THE TALMUD, AS THE STUDY OF THE TALMUD IS THAT OF JUDAISM. To wish to understand one without entering upon the explanation of the other is chimerical. They are two inseparable things, or better, THEY ARE ONE AND THE SAME." (R. 80)

Further quotations from Darmesteter, carried in petitioner's book but which respondent conveniently overlooked, included:

> "IN A WORD, HEBRAISM IS AT AN END, JUDAISM IS BORN. WHAT ARE THE CAUSES OF THE TRANSFORMATION? WHAT SERIES OF CIRCUMSTANCES COULD HAVE EFFECTED IT IN SO LIMITED A PERIOD AS THE CAPTIVITY? DARK QUESTIONS, THE ANSWERS TO WHICH MAY BE GUESSED AT, BUT THE ELEMENTS OF AN UNIMPEACHABLE SOLUTION ARE LACKING." (R. 80)

> "LET US NOW CAST A GLANCE BACKWARDS, AND TAKE A BIRD'S-EYE VIEW OF THIS EFFECTIVE DEVELOPMENT OF PHARISAIC FORMALISM. WE ARE AT ONCE STRUCK BY ITS SYSTEM OF OBSERVANCE HAVING RELATION TO EVERY MOMENT OF LIFE. THE BELIEVER FINDS HIMSELF ENMESHED IN A NET-WORK OF PRESCRIPTIONS, WHICH CLOSE IN UPON HIM ON ALL

SIDES, AND REDUCE HIM TO NEVER-ENDING SLAVERY — SLAVERY ACCEPTED FREELY AND WITH JOY, FOR THIS SACRED, A THOUSAND TIMES BLESSED YOKE IS THE CONDITION OF HAPPINESS." (R. 81)

Respondent also conveniently overlooked quoting the following pertinent observation of petitioner in the book relative to "never-ending slavery" being supposedly "accepted freely and with joy" as "the condition of happiness":

"IT SO CLOSELY RESEMBLES THE 'MORE ABUNDANT LIFE' DECEPTION OF THE BOLSHEVIKS AS TO SUGGEST LIKELIHOOD OR PROBABILITY THAT THE 'IDEALS' OF THE TALMUD MAY NOT DIFFER FROM THOSE OF BOLSHEVISM. IN THE SECOND PLACE, IT SHOULD MAKE US PAUSE AND HESITATE BEFORE ATTRIBUTING TO THE WHOLE JEWISH PEOPLE THE AUTHORSHIP OF THE TALMUD OR THEIR ACCEPTANCE OF ITS ENSLAVING SYSTEM 'FREELY AND WITH JOY.' IT SHOULD NOT BE DIFFICULT FOR PERSONS OF SOUND COMMON SENSE TO REALIZE THAT THE CLIQUE THAT DEVISED THE TALMUD MUST CONSTITUTE A CLOSELY-KNIT BAND FOR IMPOSING ITS RULE UPON VICTIMIZED PEOPLES, AND IS NOT SYNONYMOUS WITH ANY ENTIRE PEOPLE." (R. 82)

Respondent's next incomplete excerpt, the fourth, constitutes a further example of adroit lifting out of context, in order to depict petitioner as antagonistic to "the Jews"—in complete reversal of the truth, that petitioner was dealing with authentic matter emanating from recognized Jewish sources, namely, a late 8-volume English language edition of *The Talmud* "prepared under the editorship of Rabbi I. Epstein, of Jews College, London," and published "by the well-known Jewish publishing concern, The Soncino Press, London" with a Foreword by "Chief Rabbi Hertz" (R. 82). Respondent's incomplete excerpt leaves readers of his brief in the dark as to the real nature and authorship of the "8-volume set" supposed to contain "real and incontrovertible evidence" regarding the system of the Talmud, and respondent seeks to keep readers of his brief further in the dark by omitting the following illuminating statement in petitioner's book (which immediately followed respondent's incomplete excerpt):

> "THIS REAL EVIDENCE IS MADE UP OF THE TENETS OF THE TALMUD ITSELF, WHICH TENETS NECESSARILY SPEAK FOR THEMSELVES, AND MORE RELIABLY THAN ANY AMOUNT OF LAUDATION OF THE TALMUD BY ITS ADVOCATES." (R. 82)

Such illuminating statement had to be omitted by respondent, because its inclusion would have suggested to readers of his brief the reading of the quoted tenets of the Talmud (R. 83-92) which respondent naturally desired to skip over.

Respondent's fifth incomplete excerpt:

> "Consequently, it is not surprising to find shameless degradation of womanhood wherever the Talmudic influence has penetrated." (R. 89)

is an observation regarding authentic quotations from the Talmud carried in petitioner's book showing systematic degradation of womanhood. In order to pretend that petitioner was attacking the Jewish people, instead of dealing factually with the Talmud as the oppressive and uncivilized system which it is, respondent avoided altogether the authentic quotations in petitioner's book from the Talmud revealing a vile system positively degrading to womanhood (R. 89-91).

Respondent's sixth incomplete excerpt adroitly seeks to create the false impression that petitioner's book had assailed Hebraism, and, consequently, respondent found it necessary, in order to aid the attempted deception, to omit altogether the words—

> "AND THAT 'HEBRAISM IS AT AN END' "

appearing in the book immediately following the incomplete excerpt and constituting a necessary and integral part of that from which respondent was quoting. The deception sought by this sixth incomplete excerpt would also have fallen flat anyhow but for the artful distortions sought to be effected by the preceding incomplete excerpts in respondent's brief.

Respondent's seventh incomplete excerpt:

> "The alarming extent to which Talmudists have been assuming official positions in our Re-

> public should not be overlooked, particularly as the criminal system of Talmudism renders them patently ineligible to hold office in any civilized nation." (R. 243)

is unwarrantably treated by respondent as constituting an attack by petitioner's book upon "the Jews," notwithstanding the quoted sentence, as well as the context preceding and succeeding it, cannot possibly be given such an interpretation by any intelligent, fair and honest mind, because the book itself carefully distinguishes throughout between "Talmudists" and "Jews." Only a confirmed Talmudist, interested in maintaining the old Pharisaic ruse of using the Jewish people as a screen to protect the Talmudists (formerly Pharisees) from detection, could possibly find fault with a carefully documented legal and historical book for telling the real truth about Talmudism being by no means synonymous with the Jewish people, and about Talmudists being "patently ineligible to hold office in any civilized nation" (R. 243), which ineligibility must be obvious to every one acquainted with the nature of the Talmudic system and Disraeli's own boastful and illuminating description of the Talmudic head of his time, Lionel de Rothschild, as "a man without a country" (R. 104).

Respondent's series of subterfuges devised in support of his pretense that petitioner's book is "*anti-Jewish* from one end to the other" cannot be reconciled with any sense of fair-play, although, as already suggested, they do bear a strong resemblance to the circumventing methods brazenly taught in the Talmud itself. Moreover, respondent's exhibited

contempt for petitioner's consistent advocacy of equal rights and treatment for law-abiding Jews and non-Jews bears a striking resemblance to the contempt exhibited by the so-called American-Jewish journal *Opinion* of March, 1938, (Rabbi Stephen S. Wise, Editor) against Rabbi Lazaron who was charged by said journal with *"anti-Jewishness"* because he was said to be acting as an "apostle of Christian-Jewish good-will" (R. 129). Only a person of Talmudic intolerance and arrogance can possibly deem Christian-Jewish good-will to be *anti-Jewish.* A charge of anti-Jewishness must have better support than that in an American Court of Justice.

The demonstrated baselessness of respondent's charge of anti-Jewishness against petitioner and his book also disposes of respondent's further claim that the book was "defeatist" because "anti-Jewish."

However, respondent has also sought to base his "defeatist" charge upon a number of other pretenses claimed to be justified by nine excerpts from petitioner's book quoted on pages 3, 4 and 5 of respondent's brief.

The first three of said nine excerpts are all taken from the first chapter of petitioner's book, and each is adroitly lifted out of the context to give the false impression that petitioner's book advocated the use of less than our full might against our foes, respondent well knowing to the contrary, from the context carefully omitted by him, that the book patriotically advocated the preservation of constitutional government at all times as absolutely necessary to the securing of "the greatest might of the American Republic" (R. 62), and cited the decision of this Court

in *Ex parte Milligan*, 4 Wall. 2, in support of that view (R. 62). If respondent claims that it is *defeatist* to believe in and uphold the Constitution of the United States and to support a solemn decision of this Court also upholding the Constitution, respondent had better be extremely careful about so stigmatizing a loyal defender of the Constitution without a full and precise disclosure to his readers of the utterly unsound grounds for such stigmatization, to thereby furnish an antidote for his defamation.

The fourth of the nine excerpts (p. 4 of respondent's brief, near the top of the page) seems to be assailed by respondent upon the outrageously false assumption that some sort of sanctity attaches to the name "Roosevelt" preventing a legal and historical book from discussing and criticizing Clinton Roosevelt, Theodore Roosevelt and Franklin D. Roosevelt on the basis of authentic source material identified and quoted from in the book (R. 155-173).

The fifth of the nine excerpts cannot be understood without knowing the context. It consists of a single sentence lifted from the chapter "MENACE OF WORLD GOVERNMENT" (R. 216-226). The sentence is here reproduced in ordinary type together with the context in heavy type:

> "WHAT THE WORLD NEEDS MOST TODAY ARE FREE INDIVIDUALS AND FREE NATIONS. No nation can preserve its independence if it merges its destiny with any other nation or group of nations. A SOCIETY OF FREE NATIONS MUST ALWAYS BE READY TO TAKE *VOLUNTARY* CON-

CERTED ACTION AGAINST PIRATICAL OR BRIGANDRY GROUPS OR NATIONS, BUT NO SURRENDER OF SOVEREIGNTY IS NEEDED FOR THIS." (R. 216-217)

What kind of a mind can respondent have to seek to treat as *defeatist* a loyal American who believes, as did our Forefathers, in the importance of AMERICAN INDEPENDENCE?

The sixth of the nine excerpts is also taken from the chapter "MENACE OF WORLD GOVERNMENT." Those who would surrender AMERICAN INDEPENDENCE for WORLD GOVERNMENT, and want to take advantage of the war crisis to put it over, may want to close the mouths of the American people regarding the importance of preserving the former, and prevent criticism by the American people of leaders of Empires with which it is sought to merge our Republic's destiny, but no sound-thinking American can desire such stifling. A *defeatist* may be described as a person who would selfishly surrender our Republic or its independence, but most certainly *not* a person who is devoted to the preservation of the Republic and its independence. The sixth of the aforesaid nine excerpts discloses another rank lifting out of context, as will appear from its reproduction in ordinary type along with the omitted matter in heavy type:

> "If the British people were really free, it is inconceivable that they would tolerate Winston Churchill at the British helm. His own shamelessly expressed coldbloodedness matches that of the Talmudic program itself, IF WE CAN

JUDGE HIM BY WHAT HE HAS HIMSELF SAID IN HIS OWN BOOKS:

> 'IT OUGHT TO BE POSSIBLE TO ORGANIZE IN CANADA AN AMERICAN VOLUNTEER FORCE AMOUNTING TO AT LEAST A DIVISION, WHICH COULD GO INTO ACTION AS SUCH. NOTHING WILL BRING AMERICAN SYMPATHY ALONG WITH US SO MUCH AS AMERICAN BLOOD SHED IN THE FIELD.' (THE WORLD CRISIS (1931), BY WINSTON CHURCHILL, p. 293, RECITING WHAT HE HAD RECOMMENDED TO THE BRITISH CABINET IN AUGUST 1914.)" (R. 223.)

The seventh of the nine excerpts involves a still further rank lifting out of context. Petitioner's book at that point criticized the "Grandiose Proposals" by President Roosevelt in Message to Congress of January 6, 1942, to secure so-called four freedoms "EVERYWHERE IN THE WORLD" and to maintain the same "*not only for one generation but for all generations*" (R. 176-177). After stating the grandoise proposal (which was not then, and never has been, adopted by either Branch of Congress), petitioner's book criticized the proposal as follows:

> "Roosevelt made very plain that he and Churchill were in perfect harmony about this program. Before the program gets under way, it might be well for American men and boys to take one last look at an American fireside, for

they may never see one again. THEIR FATHERS AND MOTHERS AND THE AMERICAN MEN AND BOYS THEMSELVES MIGHT ALSO INQUIRE OF THEIR CONGRESSMEN AND SENATORS WHAT AUTHORITY THERE IS IN EITHER THE CONSTITUTION OR COMMON SENSE FOR THIS GRANDIOSE SCHEME, AND WHY PRESIDENT ROOSEVELT SHOULD BE PERMITTED TO THUS FLAUNT THE WARNING IN WASHINGTON'S FAREWELL ADDRESS:

'WHY QUIT OUR OWN TO STAND UPON FOREIGN GROUND?' " (R. 233)

Petitioner's obviously sound and loyal viewpoint about this matter, in perfect harmony with that of the Father of our Country, is further stated later on in petitioner's book as follows:

"By maintaining America's independent destiny and Constitutional American Liberty, we will set an example worthy of adoption in other parts of the world. This is the only way in which America can help to create a FREE WORLD. Neither Freedom nor Christianity can be implanted anywhere by aggression and force!" (R. 250)

The eighth of the nine excerpts has to do with another quotation from petitioner's book regarding Roosevelt's aforesaid grandiose proposal never ratified by either Branch of Congress. The excerpt as

carried in respondent's brief omits an opening sentence in the book's treatment:

> "OF COURSE, WHEN WE ARE AT WAR WITH ANOTHER NATION OR NATIONS, OPERATIONS OUTSIDE OUR OWN NATION ARE TO SOME EXTENT NECESSARY." (R. 233)

The excerpt begins:

> "But the enormity and character of the Roosevelt-Churchill proposals are truly shocking. Whatever their purposes, could any results be reasonably possible except the 'practical bankruptcy' comprehended in the Lenin-Stalin strategy? Is practical common sense, and a determination to save our Republic as one corner at least of Civilization, properly denominated 'defeatism'?" (R. 233.) (Note: The " 'practical bankruptcy' comprehended in the Lenin-Stalin strategy" refers to "Foundations of Leninism" (1934) by Stalin, page 95, explained at R. 228.)

At this point in respondent's brief, respondent inserted a foot-note saying:

> "Here Mr. Sullivan recognizes that the policy he advocates may be called defeatism." (p. 4 of respondent's brief)

Such foot-note constitutes a perfectly obvious misstatement or reversal of truth. It is perfectly plain from the quoted matter that, instead of "defeatism" being recognized as applicable to such a situation, the

appilcation of any such term to such situation was ridiculed. In the 1939 edition of Funk & Wagnalls New Standard Dictionary of the English language, "defeatism" was defined as—

> "The policy or course of action of one selfishly desiring the defeat of his country or party in politics,"—

in other words, one selfishly desiring a triumph over his own country or political party. Immediately after Pearl Harbor (December 7, 1941), propaganda began to impugn the loyalty of anyone criticizing New Deal policies "for the duration," and applying to any such criticism the stigmatizing term "defeatism" which had become well known as a term denoting disloyalty. Petitioner, as a loyal American, insisted upon his constitutional right to continue to criticize New Deal policies and misconduct without being dealt a foul blow by being defamed as a "defeatist," and, consequently, he ridiculed such outrageous characterization by asking:

> "Is practical common sense, and a determination to save our Republic as one corner at least of Civilization, properly denominated 'defeatism'?" (R. 233.)

The ninth and last of the aforesaid nine excerpts (p. 5 of respondent's brief) urges wisdom, integrity and truth, rather than rashness, subterfuge and deception, in both the winning of the war and the restoration of the Republic. Only a believer in one-man government, contradistinguished from constitutional government, can take exception to such prac-

tical and timely urging by an alert and loyal American who loves our Republic and wants (as he stated) to have it preserved without indulging in unkept promises such as Britain gave Poland, Finland and Greece.

Respondent's grand array of subterfuges to circumvent petitioner constitute an obvious aggravation, rather than justification, of respondent's wrong doing. The words "NAZI PROBE" used in the heading to respondent's libelous article (R. 5)—from which respondent seeks to divert attention by avoiding mention thereof in respondent's brief—necessarily added to and aggravated the obvious and unwarranted impugning of petitioner's loyalty through the use of the words "himself the author of a defeatist, anti-Jewish book" in article's text. (R. 5.)

Finally, the fact that petitioner's book "had been *read* to the jury" is sought to be relied upon by respondent as a reason for circumventing petitioner (pp. 5-6 of respondent's brief). It is not even suggested that the jurors were themselves permitted to *study* the book, and no one with a legal mind would expect persons with non-legal minds to be able to meet the subterfuge contentions of respondent without an opportunity to study the book as even legal minds would find to be necessary. Jurors so handicapped could not pass judgment intelligently upon the soundness or unsoundness of respondent's subterfuge contentions any more than blind jurors could intelligently pass judgment in a test of colors. The District Court and the United States Court of Appeals for the District of Columbia both had before them an unambiguously defamatory article impugning petitioner's loyalty published by respondent

without any justification whatsoever, and it was their plain duty to hold, as matter of law, that petitioner was entitled to recover against respondent at least compensatory damages in such amount as a qualified jury might find to be reasonable under the circumstances, even though punitive damages be not awarded.

Respondent must have known throughout this litigation that his published article against petitioner constituted a clear and unambiguous impugning of petitioner's loyalty, as the District Court found to be perfectly obvious (R. 45) but refused to instruct the jury. Respondent must also have known throughout this litigation that there was no basis whatever for so impugning petitioner's loyalty, for which reason respondent dared not assert in his pleadings, but disavowed, innuendos of disloyalty (R. 9), and later put his writer Stokes on the stand to testify in disavowal of any such claim (R. 26); yet respondent has had no scruple about resorting to an amazing series of subterfuges in an effort to circumvent petitioner's collecting any damages.

The length of this reply brief is necessitated by respondent's refusal to meet the accurate, fair, truthful, and orderly-arranged showing in the petition for certiorari, resorting instead to evasion, confusion, distortion and subterfuges which petitioner has been obliged to deal with.

Respectfully submitted,

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